

STATEMENT OF EMERGENCY

810 KAR 3:001E

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On February 11, 2021, the Kentucky General Assembly passed SB 120, which enacted numerous changes to pari-mutuel wagering in Kentucky, particularly as it relates to historical horse racing. This administrative regulation is filed on an emergency basis to ensure compliance with that statute, which will allow the Kentucky Horse Racing Commission ("KHRC") to continue to regulate pari-mutuel wagering. Additionally, this regulation is filed on an emergency basis to ensure continued regulatory authority over pari-mutuel wagering in Kentucky. The KHRC began migrating its regulations from Title 811 on September 9, 2020. Due to the Supreme Court's opinion in *Family Trust Foundation v. Kentucky Horse Racing Commission*, No. 2018-SC-0630 (Sept. 24, 2020) and the passage of SB 120, those regulations became obsolete. Therefore, the migration must take place in emergency regulations. Otherwise, the pending regulations will expire, and pari-mutuel wagering will not be regulated. This would cause a loss of state funds, and would also negatively impact the public welfare by endangering jobs. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET

Kentucky Horse Racing Commission

(Emergency Amendment)

810 KAR 3:001E. Definitions for 810 KAR Chapter 3.

EFFECTIVE: February 25, 2021

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing is conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 3.

Section 1. Definitions.

- (1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.
- (2) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.
- (3) "ARCI" means the Association of Racing Commissioners International.
- (4) "Association" is defined by KRS 230.210(5).
- (5) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(6) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 4:050 and 810 KAR 5:030

(7) "Commission" means:

(a) The Kentucky Horse Racing Commission as defined by KRS 230.210~~[(46)]~~ if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Directive" means an official order issued by the commission or the executive director.

(12) "Draw" means the process of determining post positions by lot.

(13) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(14) "Early closing race" means in standardbred racing a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(15) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(16) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(17) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(19) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(20) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(21) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(22) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(23) "Licensee" means an individual, firm, association, partnership, corporation, limited liability company, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(24) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(25) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(26) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(27) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(28) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" is defined in 810 KAR 6:001. ~~[each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.]~~

(29) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(30) "Purse" means the gross cash portion of the prize for which a race is run.

(31) "Race" means a running contest between horses ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(32) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(33) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(34) "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.

(35) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(36) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(37) "Simulcasting" is defined by KRS 230.210~~[(49)]~~.

(38) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(39) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(40) "Suspended" means withdrawal of racing privileges by the stewards or commission.

(41) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices, that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(42) "USTA" means the United States Trotting Association.

(43) "Workout" means in flat racing the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(44) "Year" means twelve (12) consecutive months beginning with January and ending with December.

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: February 24, 2021

FILED WITH LRC: February 25, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at April 22, 2021 at 9:00 a.m. at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on April 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email Jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in 810 KAR Chapter 3.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that various terms used in 810 KAR Chapter 3 are defined properly and precisely.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This regulation sets forth defined terms that are used in the regulations in 810 KAR Chapter 3.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the Commission's statutory mandate to prescribe the conditions under which horse racing is conducted in the Commonwealth by defining terms used in 810 KAR Chapter 3.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will alter the definition of "pari-mutuel wagering, mutuel wagering, or pari-mutuel system of wagering," so that it cross-references the definition for that term found in 810 KAR 6:001. In addition, this amendment includes a variety of other minor language modifications that are intended to ensure clarity and consistency throughout the Commission's authorizing statutes and accompanying regulations

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to ensure consistency and a lack of conflict between the Commission's regulations and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment ensures consistency and a lack of conflict between the Commission regulations addressing those conditions, and Senate Bill 120, which was recently enacted by the Kentucky General Assembly and signed into law by Governor Beshear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth and any applicant for a racing association license.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No additional action is required at this time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None